

## [COMMITTEE PRINT]

May 14, 2003

[Showing H.R. 1474, As Adopted by the Subcommittee on  
Financial Institutions and Consumer Credit]

108TH CONGRESS  
1ST SESSION

# H. R. 1474

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2003

Ms. HART (for herself, Mr. FORD, Mr. FERGUSON, Mr. OXLEY, Mr. BACHUS, Mr. CROWLEY, Mr. JONES of North Carolina, Mr. ROYCE, Mrs. KELLY, Mr. TOOMEY, Mr. GILLMOR, Mr. HINOJOSA, Mr. LUCAS of Kentucky, Mr. ROSS, Mrs. MCCARTHY of New York, Mr. MCINTYRE, Ms. NORTON, and Mr. BOSWELL) introduced the following bill; which was referred to the Committee on Financial Services

[Strike out all after the enacting clause and insert in lieu thereof the part printed in roman]

[For text of introduced bill, see copy of bill as introduced on March 27, 2003]

## A BILL

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*



1 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Check Clearing for the 21st Century Act”.

4 (b) FINDINGS.—The Congress finds as follows:

5 (1) In the Expedited Funds Availability Act,  
6 enacted on August 10, 1987, the Congress directed  
7 the Board of Governors of the Federal Reserve Sys-  
8 tem to consider establishing regulations requiring  
9 Federal reserve banks and depository institutions to  
10 provide for check truncation, in order to improve the  
11 check processing system.

12 (2) In that same Act, the Congress—

13 (A) provided the Board of Governors of the  
14 Federal Reserve System with full authority to  
15 regulate all aspects of the payment system, in-  
16 cluding the receipt, payment, collection, and  
17 clearing of checks, and related functions of the  
18 payment system pertaining to checks; and

19 (B) directed that the exercise of such au-  
20 thority by the Board superseded any State law,  
21 including the Uniform Commercial Code, as in  
22 effect in any State.

23 (3) Check truncation is no less desirable today  
24 for both financial service customers and the financial  
25 services industry, to reduce costs, improve efficiency  
26 in check collections, and expedite funds availability



1 for customers than it was over 15 years ago when  
2 Congress first directed the Board to consider estab-  
3 lishing such a process.

4 (c) PURPOSES.—The purposes of this Act are as fol-  
5 lows:

6 (1) To facilitate check truncation by author-  
7 izing substitute checks.

8 (2) To foster innovation in the check collection  
9 system without mandating receipt of checks in elec-  
10 tronic form.

11 (3) To improve the overall efficiency of the Na-  
12 tion's payments system.

13 **SEC. 2. DEFINITIONS.**

14 For purposes of this Act, the following definitions  
15 shall apply:

16 (1) ACCOUNT.—The term “account” means a  
17 deposit account at a bank.

18 (2) BANK.—The term “bank” means any per-  
19 son that is located in a State and engaged in the  
20 business of banking and includes—

21 (A) any depository institution (as defined  
22 in section 19(b)(1)(A) of the Federal Reserve  
23 Act);

24 (B) any Federal reserve bank;

25 (C) any Federal home loan bank; or



1 (D) to the extent it acts as a payor—  
2 (i) the Treasury of the United States;  
3 (ii) the United States Postal Service;  
4 (iii) a State government; or  
5 (iv) a unit of general local government  
6 (as defined in section 602(24) of the Expe-  
7 dited Funds Availability Act).

8 (3) BANKING TERMS.—

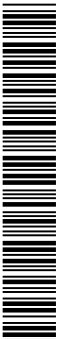
9 (A) CLAIMANT BANK.—The term “claim-  
10 ant bank” means a bank that submits a claim  
11 for recredit under section 7 to an indemnifying  
12 bank.

13 (B) COLLECTING BANK.—The term “col-  
14 lecting bank” means any bank handling a check  
15 for collection except the paying bank.

16 (C) DEPOSITARY BANK.—The term “de-  
17 positary bank” means—

18 (i) the first bank to which a check is  
19 transferred, even if such bank is also the  
20 paying bank or the payee; or

21 (ii) a bank to which a check is trans-  
22 ferred for deposit in an account at such  
23 bank, even if the check is physically re-  
24 ceived and indorsed first by another bank.



1 (D) PAYING BANK.—The term “paying  
2 bank” means—

3 (i) the bank by which a check is pay-  
4 able, unless the check is payable at or  
5 through another bank and is sent to the  
6 other bank for payment or collection; or

7 (ii) the bank at or through which a  
8 check is payable and to which the check is  
9 sent for payment or collection.

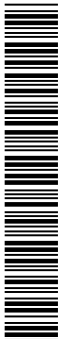
10 (E) RETURNING BANK.—

11 (i) IN GENERAL.—The term “return-  
12 ing bank” means a bank (other than the  
13 paying or depository bank) handling a re-  
14 turned check or notice in lieu of return.

15 (ii) TREATMENT AS COLLECTING  
16 BANK.—No provision of this Act shall be  
17 construed as affecting the treatment of a  
18 returning bank as a collecting bank for  
19 purposes of section 4-202(b) of the Uni-  
20 form Commercial Code.

21 (4) BOARD.—The term “Board” means the  
22 Board of Governors of the Federal Reserve System.

23 (5) BUSINESS DAY.—The term “business day”  
24 has the same meaning as in section 602(3) of the  
25 Expedited Funds Availability Act.



1 (6) CHECK.—The term “check”—

2 (A) means a draft, payable on demand and  
3 drawn on or payable through or at an office of  
4 a bank, whether or not negotiable, that is han-  
5 dled for forward collection or return, including  
6 a substitute check and a travelers check; and

7 (B) does not include a noncash item or an  
8 item payable in a medium other than United  
9 States dollars.

10 (7) CONSUMER.—The term “consumer” means  
11 an individual who—

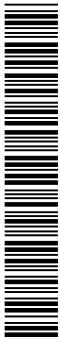
12 (A) with respect to a check handled for  
13 forward collection, draws the check on a con-  
14 sumer account; or

15 (B) with respect to a check handled for re-  
16 turn, deposits the check into, or cashes the  
17 check against, a consumer account.

18 (8) CONSUMER ACCOUNT.—The term “con-  
19 sumer account” has the same meaning as in section  
20 602(10) of the Expedited Funds Availability Act.

21 (9) CUSTOMER.—The term “customer” means  
22 a person having an account with a bank.

23 (10) FORWARD COLLECTION.—The term “for-  
24 ward collection” means the transfer by a bank of a



1 check to a collecting bank for settlement or the pay-  
2 ing bank for payment.

3 (11) INDEMNIFYING BANK.—The term “indem-  
4 nifying bank” means a bank that is providing an in-  
5 demnity under section 5 with respect to a substitute  
6 check.

7 (12) MICR LINE.—The terms “MICR line” and  
8 “magnetic ink character recognition line” mean the  
9 numbers, which may include the bank routing num-  
10 ber, account number, check number, check amount,  
11 and other information, that are printed near the bot-  
12 tom of a check in magnetic ink in accordance with  
13 generally applicable industry standards.

14 (13) NONCASH ITEM.—The term “noncash  
15 item” has the same meaning as in section 602(14)  
16 of the Expedited Funds Availability Act.

17 (14) PERSON.—The term “person” means a  
18 natural person, corporation, unincorporated com-  
19 pany, partnership, government unit or instrumen-  
20 tality, trust, or any other entity or organization.

21 (15) RECONVERTING BANK.—The term “recon-  
22 verting bank” means—

23 (A) the bank that creates a substitute  
24 check; or



1 (B) if a substitute check is created by a  
2 person other than a bank, the first bank that  
3 transfers or presents such substitute check.

4 (16) SUBSTITUTE CHECK.—The term “sub-  
5 stitute check” means a paper reproduction of the  
6 original check that—

7 (A) contains an image of the front and  
8 back of the original check;

9 (B) bears a MICR line containing all the  
10 information appearing on the MICR line of the  
11 original check, except as provided under gen-  
12 erally applicable industry standards for sub-  
13 stitute checks to facilitate the processing of  
14 substitute checks;

15 (C) conforms, in paper stock, dimension,  
16 and otherwise, with generally applicable indus-  
17 try standards for substitute checks; and

18 (D) is suitable for automated processing in  
19 the same manner as the original check.

20 (17) STATE.—The term “State” has the same  
21 meaning as in section 3(a)(3) of the Federal Deposit  
22 Insurance Act.

23 (18) TRUNCATE.—The term “truncate” means  
24 to remove an original paper check from the check  
25 collection or return process and send to a recipient,





1 in lieu of such original paper check, a substitute  
2 check or, by agreement, information relating to the  
3 original check (including data taken from the MICR  
4 line of the original check or an electronic image of  
5 the original check), whether with or without subse-  
6 quent delivery of the original paper check.

7 (19) UNIFORM COMMERCIAL CODE.—The term  
8 “Uniform Commercial Code” means the Uniform  
9 Commercial Code in effect in a State.

10 (20) OTHER TERMS.—Unless the context re-  
11 quires otherwise, the terms not defined in this sec-  
12 tion shall have the same meanings as in the Uniform  
13 Commercial Code.

14 **SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE**  
15 **CHECKS.**

16 (a) NO AGREEMENT REQUIRED.—A person may de-  
17 posit, present, or send for collection or return a substitute  
18 check without an agreement with the recipient, so long as  
19 a bank has made the warranties in section 4 with respect  
20 to such substitute check.

21 (b) LEGAL EQUIVALENCE.—A substitute check shall  
22 be the legal equivalent of the original check for all pur-  
23 poses, including any provision of any Federal or State law,  
24 and for all persons if the substitute check—



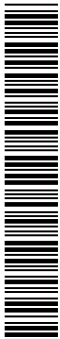
1 (1) accurately represents all of the information  
2 on the front and back of the original check as of the  
3 time the original check was truncated; and

4 (2) bears the legend: “This is a legal copy of  
5 your check. You can use it the same way you would  
6 use the original check.”.

7 (c) ENDORSEMENTS.—A bank shall ensure that the  
8 substitute check for which the bank is the reconverting  
9 bank bears all endorsements applied by parties that pre-  
10 viously handled the check (whether in electronic form or  
11 in the form of the original paper check or a substitute  
12 check) for forward collection or return.

13 (d) IDENTIFICATION OF RECONVERTING BANK.—A  
14 bank shall identify itself as a reconverting bank on any  
15 substitute check for which the bank is a reconverting bank  
16 so as to preserve any previous reconverting bank identi-  
17 fications in conformance with generally applicable industry  
18 standards.

19 (e) APPLICABLE LAW.—A substitute check that is  
20 the legal equivalent of the original check under subsection  
21 (b) shall be subject to any provision of part 229 of title  
22 12 of the Code of Federal Regulations, the Uniform Com-  
23 mercial Code, and any other applicable Federal or State  
24 law as if such substitute check were the original check,



1 to the extent such provision of law is not inconsistent with  
2 this Act.

3 **SEC. 4. SUBSTITUTE CHECK WARRANTIES.**

4 A bank that transfers, presents, or returns a sub-  
5 stitute check and receives consideration for the check war-  
6 rants, as a matter of law, to the transferee, any subse-  
7 quent collecting or returning bank, the depository bank,  
8 the drawee, the drawer, the payee, the depositor, and any  
9 endorser (regardless of whether the warrantee receives the  
10 substitute check or another paper or electronic form of  
11 the substitute check or original check) that—

12 (1) the substitute check meets all the require-  
13 ments for legal equivalence under section 3(b); and

14 (2) no depository bank, drawee, drawer, or en-  
15 dorser will receive presentment or return of the sub-  
16 stitute check, the original check, or a copy or other  
17 paper or electronic version of the substitute check or  
18 original check such that the bank, drawee, drawer,  
19 or endorser will be asked to make a payment based  
20 on a check that the bank, drawee, drawer, or en-  
21 dorser has already paid.

22 **SEC. 5. INDEMNITY.**

23 (a) INDEMNITY.—A reconverting bank and each bank  
24 that subsequently transfers, presents, or returns a sub-  
25 stitute check in any electronic or paper form, and receives



1 consideration for such transfer, presentment, or return  
2 shall indemnify the transferee, any subsequent collecting  
3 or returning bank, the depositary bank, the drawee, the  
4 drawer, the payee, the depositor, and any endorser, up to  
5 the amount described in subsections (b) and (c), as appli-  
6 cable, to the extent of any loss incurred by any recipient  
7 of a substitute check if that loss occurred due to the re-  
8 ceipt of a substitute check instead of the original check.

9 (b) INDEMNITY AMOUNT.—

10 (1) AMOUNT IN EVENT OF BREACH OF WAR-  
11 RANTY.—The amount of the indemnity under sub-  
12 section (a) shall be the amount of any loss (includ-  
13 ing costs and reasonable attorney's fees and other  
14 expenses of representation) proximately caused by a  
15 breach of a warranty provided under section 4.

16 (2) AMOUNT IN ABSENCE OF BREACH OF WAR-  
17 RANTY.—In the absence of a breach of a warranty  
18 provided under section 4, the amount of the indem-  
19 nity under subsection (a) shall be the sum of—

20 (A) the amount of any loss, up to the  
21 amount of the substitute check; and

22 (B) interest and expenses (including costs  
23 and reasonable attorney's fees and other ex-  
24 penses of representation).



1 (c) COMPARATIVE NEGLIGENCE.—If a loss described  
2 in subsection (a) results in whole or in part from the neg-  
3 ligence or failure to act in good faith on the part of an  
4 indemnified party, then that party's indemnification under  
5 this section shall be reduced in proportion to the amount  
6 of negligence or bad faith attributable to that party.

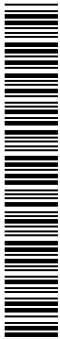
7 (d) EFFECT OF PRODUCING ORIGINAL CHECK OR  
8 COPY.—

9 (1) IN GENERAL.—If the indemnifying bank  
10 produces the original check or a copy of the original  
11 check (including an image or a substitute check)  
12 that accurately represents all of the information on  
13 the front and back of the original check (as of the  
14 time the original check was truncated) or is other-  
15 wise sufficient to determine whether or not a claim  
16 is valid, the indemnifying bank shall—

17 (A) be liable under this section only for  
18 losses covered by the indemnity that are in-  
19 curred up to the time the original check or such  
20 copy is provided to the indemnified party; and

21 (B) have a right to the return of any funds  
22 the bank has paid under the indemnity in ex-  
23 cess of those losses.

24 (2) COORDINATION OF INDEMNITY WITH IM-  
25 PLIED WARRANTY.—The production of the original



1 check, a substitute check, or a copy under paragraph  
2 (1) by an indemnifying bank shall not absolve the  
3 bank from any liability on a warranty established  
4 under this Act or any other provision of law.

5 (e) SUBROGATION OF RIGHTS.—

6 (1) IN GENERAL.—Each indemnifying bank  
7 shall be subrogated to the rights of any indemnified  
8 party to the extent of the indemnity.

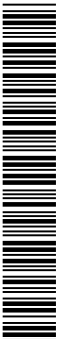
9 (2) RECOVERY UNDER WARRANTY.—A bank  
10 that indemnifies a party under this section may at-  
11 tempt to recover from another party based on a war-  
12 ranty or other claim.

13 (3) DUTY OF INDEMNIFIED PARTY.—Each in-  
14 demnified party shall have a duty to comply with all  
15 reasonable requests for assistance from an indem-  
16 nifying bank in connection with any claim the in-  
17 demnifying bank brings against a warrantor or other  
18 party related to a check that forms the basis for the  
19 indemnification.

20 **SEC. 6. EXPEDITED RECREDIT FOR CONSUMERS.**

21 (a) RECREDIT CLAIMS.—

22 (1) IN GENERAL.—A consumer may make a  
23 claim for expedited recredit from the bank that  
24 holds the account of the consumer with respect to a



1        substitute check, if the consumer asserts in good  
2        faith that—

3                (A) the bank charged the consumer's ac-  
4                count for a substitute check that was provided  
5                to the consumer;

6                (B) either—

7                        (i) the check was not properly charged  
8                        to the consumer's account; or

9                        (ii) the consumer has a warranty  
10                      claim with respect to such substitute  
11                      check;

12                (C) the consumer suffered a resulting loss;  
13        and

14                (D) the production of the original check or  
15                a better copy of the original check is necessary  
16                to determine the validity of any claim described  
17                in subparagraph (B).

18                (2) 30-DAY PERIOD.—Any claim under para-  
19        graph (1) with respect to a consumer account may  
20        be submitted by a consumer before the end of the  
21        30-day period beginning on the later of—

22                (A) the date on which the consumer re-  
23                ceives the periodic statement of account for  
24                such account which contains information con-



1 cerning the transaction giving rise to the claim;  
2 or

3 (B) the date the substitute check is made  
4 available to the consumer.

5 (3) EXTENSION UNDER EXTENUATING CIR-  
6 CUMSTANCES.—If the consumer's ability to submit  
7 the claim within the 30-day period under paragraph  
8 (2) is delayed due to extenuating circumstances, in-  
9 cluding extended travel or the illness of the con-  
10 sumer, the 30-day period shall be extended for a  
11 total not to exceed 30 additional days.

12 (b) PROCEDURES FOR CLAIMS.—

13 (1) IN GENERAL.—To make a claim for an ex-  
14 pedited recredit under subsection (a) with respect to  
15 a substitute check, the consumer shall provide to the  
16 bank that holds the account of such consumer—

17 (A) a description of the claim, including an  
18 explanation of—

19 (i) why the substitute check was not  
20 properly charged to the consumer's ac-  
21 count; or

22 (ii) the warranty claim with respect to  
23 such check;





1 (B) a statement that the consumer suf-  
2 fered a loss and an estimate of the amount of  
3 the loss;

4 (C) the reason why production of the origi-  
5 nal check or a better copy of the original check  
6 is necessary to determine the validity of the  
7 charge to the consumer's account or the war-  
8 ranty claim; and

9 (D) sufficient information to identify the  
10 substitute check and to investigate the claim.

11 (2) CLAIM IN WRITING.—The bank holding the  
12 consumer account that is the subject of a claim by  
13 the consumer under subsection (a) may, in the dis-  
14 cretion of the bank, require the consumer to submit  
15 the information required under paragraph (1) in  
16 writing.

17 (c) RECREDIT TO CONSUMER.—

18 (1) CONDITIONS FOR RECREDIT.—The bank  
19 shall recredit a consumer account in accordance with  
20 paragraph (2) for the amount of a substitute check  
21 that was charged against the consumer account if—

22 (A) a consumer submits a claim to the  
23 bank with respect to that substitute check that  
24 meets the requirement of subsection (b); and



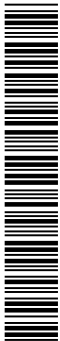
1 (B) the bank has not provided to the con-  
2 sumer the original check, a substitute check, or  
3 a copy of the original check and demonstrates  
4 that the substitute check was properly charged  
5 to the consumer's account.

6 (2) TIMING OF RECREDIT.—

7 (A) IN GENERAL.—The bank shall recredit  
8 the consumer's account for the amount de-  
9 scribed in paragraph (1) no later than the end  
10 of the business day following the business day  
11 on which the bank determines the consumer's  
12 claim is valid.

13 (B) RECREDIT PENDING INVESTIGA-  
14 TION.—If the bank has not yet determined that  
15 the consumer's claim is valid before the end of  
16 the 10th business day after the business day on  
17 which the consumer submitted the claim, the  
18 bank shall recredit the consumer's account  
19 for—

20 (i) the lesser of the amount of the  
21 substitute check that was charged against  
22 the consumer account, or \$2,500, together  
23 with interest if the account is an interest-  
24 bearing account, no later than the end of  
25 such 10th business day; and

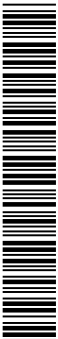


1 (ii) the remaining amount of the sub-  
2 stitute check that was charged against the  
3 consumer account, if any, together with in-  
4 terest if the account is an interest-bearing  
5 account, not later than the 45th calendar  
6 day following the business day on which  
7 the consumer submits the claim.

8 (d) AVAILABILITY OF RECREDIT.—

9 (1) NEXT BUSINESS DAY AVAILABILITY.—Ex-  
10 cept as provided in paragraph (2), a bank that pro-  
11 vides a recredit to a consumer account under sub-  
12 section (c) shall make the recredited funds available  
13 for withdrawal by the consumer by the start of the  
14 next business day after the business day on which  
15 the bank recredits the consumer's account under  
16 subsection (c).

17 (2) SAFEGUARD EXCEPTIONS.—A bank may  
18 delay availability to a consumer of a recredit pro-  
19 vided under subsection (c)(2)(B)(i) until the start of  
20 either the business day following the business day on  
21 which the bank determines that the consumer's  
22 claim is valid or the 45th calendar day following the  
23 business day on which the consumer submits a claim  
24 for such recredit in accordance with subsection (b),



1       whichever is earlier, in any of the following cir-  
2       cumstances:

3               (A) NEW ACCOUNTS.—The claim is made  
4               during the 30-day period beginning on the busi-  
5               ness day the consumer account was established.

6               (B) REPEATED OVERDRAFTS.—Without  
7               regard to the charge that is the subject of the  
8               claim for which the recredit was made—

9                       (i) on 6 or more business days during  
10                      the 6-month period ending on the date on  
11                      which the consumer submits the claim, the  
12                      balance in the consumer account was nega-  
13                      tive or would have become negative if  
14                      checks or other charges to the account had  
15                      been paid; or

16                     (ii) on 2 or more business days during  
17                     such 6-month period, the balance in the  
18                     consumer account was negative or would  
19                     have become negative in the amount of  
20                     \$5,000 or more if checks or other charges  
21                     to the account had been paid.

22               (C) PREVENTION OF FRAUD LOSSES.—The  
23               bank has reasonable cause to believe that the  
24               claim is fraudulent, based on facts (other than  
25               the fact that the check in question or the con-



1           sumer is of a particular class) that would cause  
2           a well-grounded belief in the mind of a reason-  
3           able person that the claim is fraudulent.

4           (3) OVERDRAFT FEES.—No bank that, in ac-  
5           cordance with paragraph (2), delays the availability  
6           of a recredit under subsection (c) to any consumer  
7           account may impose any overdraft fees with respect  
8           to drafts drawn by the consumer on such recredited  
9           amount before the end of the 5-day period beginning  
10          on the date notice of the delay in the availability of  
11          such amount is sent by the bank to the consumer.

12          (e) REVERSAL OF RECREDIT.—A bank may reverse  
13          a recredit to a consumer account if the bank—

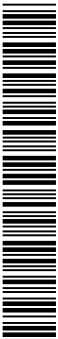
14               (1) determines that a substitute check for which  
15               the bank recredited a consumer account under sub-  
16               section (c) was in fact properly charged to the con-  
17               sumer account; and

18               (2) notifies the consumer in accordance with  
19               subsection (f)(3).

20          (f) NOTICE TO CONSUMER.—

21               (1) NOTICE IF CONSUMER CLAIM NOT VALID.—

22               If a bank determines that a substitute check subject  
23               to the consumer's claim was in fact properly charged  
24               to the consumer's account, the bank shall send to  
25               the consumer, no later than the business day fol-



1       lowing the business day on which the bank makes a  
2       determination—

3               (A) the original check or a copy of the  
4               original check (including an image or a sub-  
5               stitute check) that—

6                       (i) accurately represents all of the in-  
7                       formation on the front and back of the  
8                       original check (as of the time the original  
9                       check was truncated); or

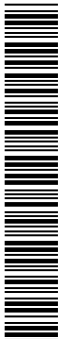
10                      (ii) is otherwise sufficient to deter-  
11                      mine whether or not the consumer's claim  
12                      is valid; and

13               (B) an explanation of the basis for the de-  
14               termination by the bank that the substitute  
15               check was properly charged, including copies of  
16               any information or documents on which the  
17               bank relied in making the determination.

18               (2) NOTICE OF RECREDIT.—If a bank recredits  
19               a consumer account under subsection (c), the bank  
20               shall send to the consumer, no later than the busi-  
21               ness day following the business day on which the  
22               bank makes the recredit, a notice of—

23                      (A) the amount of the recredit; and

24                      (B) the date the recredited funds will be  
25               available for withdrawal.



1           (3) NOTICE OF REVERSAL OF RECREDIT.—In  
2           addition to the notice required under paragraph (1),  
3           if a bank reverses a recredited amount under sub-  
4           section (e), the bank shall send to the consumer, no  
5           later than the business day following the business  
6           day on which the bank reverses the recredit, a notice  
7           of—

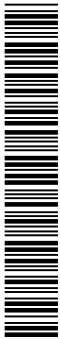
8                       (A) the amount of the reversal; and

9                       (B) the date the recredit was reversed.

10          (4) MODE OF DELIVERY.—A notice described in  
11          this subsection shall be delivered by United States  
12          mail or by any other means through which the con-  
13          sumer has agreed to receive account information.

14          (g) OTHER CLAIMS NOT AFFECTED.—Providing a  
15          recredit in accordance with this section shall not absolve  
16          the bank from liability for a claim made under any other  
17          law, such as a claim for wrongful dishonor under the Uni-  
18          form Commercial Code, or from liability for additional  
19          damages under section 5 or 9.

20          (h) CLARIFICATION CONCERNING CONSUMER POS-  
21          SESSION.—A consumer who was provided a substitute  
22          check may make a claim for an expedited recredit under  
23          this section with regard to a transaction involving the sub-  
24          stitute check whether or not the consumer is in possession  
25          of the substitute check.



1 (i) SCOPE OF APPLICATION.—This section shall only  
2 apply to customers who are consumers.

3 **SEC. 7. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

4 (a) RECREDIT CLAIMS.—

5 (1) IN GENERAL.—A bank may make a claim  
6 against an indemnifying bank for expedited recredit  
7 for which that bank is indemnified if—

8 (A) the claimant bank (or a bank that the  
9 claimant bank has indemnified) has received a  
10 claim for expedited recredit from a consumer  
11 under section 6 with respect to a substitute  
12 check or would have been subject to such a  
13 claim had the consumer's account been charged;

14 (B) the claimant bank has suffered a re-  
15 sulting loss or is obligated to recredit a con-  
16 sumer account under section 6 with respect to  
17 such substitute check; and

18 (C) production of the original check, an-  
19 other substitute check, or a better copy of the  
20 original check is necessary to determine the va-  
21 lidity of the charge to the customer account or  
22 any warranty claim connected with such sub-  
23 stitute check.

24 (2) 120-DAY PERIOD.—Any claim under para-  
25 graph (1) may be submitted by the claimant bank





1 to an indemnifying bank before the end of the 120-  
2 day beginning on the date of the transaction that  
3 gave rise to the claim.

4 (b) PROCEDURES FOR CLAIMS.—

5 (1) IN GENERAL.—To make a claim under sub-  
6 section (a) for an expedited recredit relating to a  
7 substitute check, the claimant bank shall send to the  
8 indemnifying bank—

9 (A) a description of—

10 (i) the claim, including an explanation  
11 of why the substitute check cannot be  
12 properly charged to the consumer account;  
13 or

14 (ii) the warranty claim;

15 (B) a statement that the claimant bank  
16 has suffered a loss or is obligated to recredit  
17 the consumer's account under section 6, to-  
18 gether with an estimate of the amount of the  
19 loss or recredit;

20 (C) the reason why production of the origi-  
21 nal check, another substitute check, or a better  
22 copy of the original check is necessary to deter-  
23 mine the validity of the charge to the consumer  
24 account or the warranty claim; and



1 (D) information sufficient for the indem-  
2 nifying bank to identify the substitute check  
3 and to investigate the claim.

4 (2) REQUIREMENTS RELATING TO COPIES OF  
5 SUBSTITUTE CHECKS.—If the information submitted  
6 by a claimant bank pursuant to paragraph (1) in  
7 connection with a claim for an expedited recredit in-  
8 cludes a copy of any substitute check for which any  
9 such claim is made, the claimant bank shall take  
10 reasonable steps to ensure that any such copy can-  
11 not be—

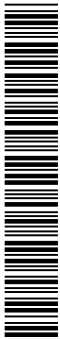
12 (A) mistaken for the legal equivalent of the  
13 check under section 3(b); or

14 (B) sent or handled by any bank, including  
15 the indemnifying bank, as a forward collection  
16 or returned check.

17 (3) CLAIM IN WRITING.—An indemnifying bank  
18 may, in the bank's discretion, require the claimant  
19 bank to submit in writing the information required  
20 by paragraph (1), including a copy of the written  
21 claim, if any, that the consumer submitted in ac-  
22 cordance with section 6(b).

23 (c) RECREDIT BY INDEMNIFYING BANK.—

24 (1) PROMPT ACTION REQUIRED.—No later than  
25 10 business days after the business day on which an



1 indemnifying bank receives a claim under subsection  
2 (a) from a claimant bank with respect to a sub-  
3 stitute check, the indemnifying bank shall—

4 (A) provide, to the claimant bank, the  
5 original check (with respect to such substitute  
6 check) or a copy of the original check (including  
7 an image or a substitute check) that—

8 (i) accurately represents all of the in-  
9 formation on the front and back of the  
10 original check (as of the time the original  
11 check was truncated); or

12 (ii) is otherwise sufficient to deter-  
13 mine the bank's claim is not valid; and

14 (B) recredit the claimant bank for the  
15 amount of the claim up to the amount of the  
16 substitute check, plus interest if applicable; or

17 (C) provide information to the claimant  
18 bank as to why the indemnifying bank is not  
19 obligated to comply with subparagraph (A) or  
20 (B).

21 (2) RECREDIT DOES NOT ABROGATE OTHER LI-  
22 ABILITIES.—Providing a recredit under this sub-  
23 section to a claimant bank with respect to a sub-  
24 stitute check shall not absolve the indemnifying bank  
25 from liability for claims brought under any other law



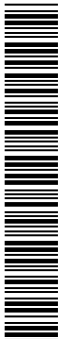
1 or from additional damages under section 5 or 9  
2 with respect to such check.

3 (3) REFUND TO INDEMNIFYING BANK.—If a  
4 claimant bank reverses, in accordance with section  
5 6(e), a recredit previously made to a consumer ac-  
6 count under section 6(c), or otherwise receives a  
7 credit or recredit with regard to such substitute  
8 check, the claimant bank shall promptly refund to  
9 any indemnifying bank any amount previously ad-  
10 vanced by the indemnifying bank in connection with  
11 such substitute check.

12 (d) PRODUCTION OF ORIGINAL CHECK OR A SUFFI-  
13 CIENT COPY GOVERNED BY SECTION 5(d).—If the indem-  
14 nifying bank provides the claimant bank with the original  
15 check or a copy of the original check (including an image  
16 or a substitute check) under subsection (c)(1)(A), section  
17 5(d) shall govern any right of the indemnifying bank to  
18 any repayment of any funds the indemnifying bank has  
19 recredited to the claimant bank pursuant to subsection (c).

20 **SEC. 8. DELAYS IN AN EMERGENCY.**

21 Delay by a bank beyond the time limits prescribed  
22 or permitted by this Act is excused if the delay is caused  
23 by interruption of communication or computer facilities,  
24 suspension of payments by another bank, war, emergency  
25 conditions, failure of equipment, or other circumstances



1 beyond the control of a bank and if the bank uses such  
2 diligence as the circumstances require.

3 **SEC. 9. MEASURE OF DAMAGES.**

4 (a) LIABILITY.—

5 (1) IN GENERAL.—Except as provided in sec-  
6 tion 5, any person who, in connection with a sub-  
7 stitute check, breaches any warranty under this Act  
8 or fails to comply with any requirement imposed by,  
9 or regulation prescribed pursuant to, this Act with  
10 respect to any other person shall be liable to such  
11 person in an amount equal to the sum of—

12 (A) the lesser of—

13 (i) the amount of the loss suffered by  
14 the other person as a result of the breach  
15 or failure; or

16 (ii) the amount of the substitute  
17 check; and

18 (B) interest and expenses (including costs  
19 and reasonable attorney's fees and other ex-  
20 penses of representation) related to the sub-  
21 stitute check.

22 (2) OFFSET OF RECREDITS.—The amount of  
23 damages any person receives under paragraph (1), if  
24 any, shall be reduced by the amount, if any, that the



1 claimant receives and retains as a recredit under  
2 section 6 or 7.

3 (b) COMPARATIVE NEGLIGENCE.—If a person incurs  
4 damages that resulted in whole or in part from the neg-  
5 ligence or failure of that person to act in good faith, then  
6 the amount of any liability due to that person under sub-  
7 section (a) shall be reduced in proportion to the amount  
8 of negligence or bad faith attributable to that person.

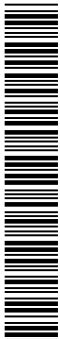
9 **SEC. 10. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

10 (a) ACTIONS UNDER THIS ACT.—

11 (1) IN GENERAL.—An action to enforce a claim  
12 under this Act may be brought in any United States  
13 district court, or in any other court of competent ju-  
14 risdiction, before the end of the 1-year period begin-  
15 ning on the date the cause of action accrues.

16 (2) ACCRUAL.—A cause of action accrues as of  
17 the date the injured party first learns, or by which  
18 such person reasonably should have learned, of the  
19 facts and circumstances giving rise to the cause of  
20 action.

21 (b) DISCHARGE OF CLAIMS.—Except as provided in  
22 subsection (c), unless a person gives notice of a claim to  
23 the indemnifying or warranting bank within 30 days after  
24 the person has reason to know of the claim and the iden-  
25 tity of the indemnifying or warranting bank, the indem-



1 nifying or warranting bank is discharged to the extent of  
2 any loss caused by the delay in giving notice of the claim.

3 (c) NOTICE OF CLAIM BY CONSUMER.—A timely  
4 claim by a consumer under section 6 for expedited recredit  
5 constitutes timely notice of a claim by the consumer for  
6 purposes of subsection (b).

7 **SEC. 11. CONSUMER AWARENESS.**

8 (a) IN GENERAL.—Each bank shall provide, in ac-  
9 cordance with subsection (b), a brief notice about sub-  
10 stitute checks that describes—

11 (1) the process of check substitution and how  
12 the process may be different than the check clearing  
13 process with which the consumer may be familiar;  
14 and

15 (2) a description of the consumer recredit  
16 rights established under section 6 when a consumer  
17 believes in good faith that a substitute check was  
18 not properly charged to the consumer's account.

19 (b) DISTRIBUTION.—

20 (1) EXISTING CUSTOMERS.—With respect to  
21 consumers that are customers of a bank on the ef-  
22 fective date of this Act, a bank shall provide the no-  
23 tice described in subsection (a) to each such con-  
24 sumer no later than the first regularly scheduled



1 communication with the consumer after the effective  
2 date of this Act.

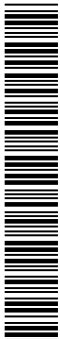
3 (2) NEW ACCOUNT HOLDERS.—A bank shall  
4 provide the notice described in subsection (a) to each  
5 consumer, other than existing customers referred to  
6 in paragraph (1), at the time at which the customer  
7 relationship is initiated.

8 (3) MODE OF DELIVERY.—A bank may send  
9 the notices required by this subsection by United  
10 States mail or by any other means through which  
11 the consumer has agreed to receive account informa-  
12 tion.

13 (c) MODEL LANGUAGE.—

14 (1) IN GENERAL.—No later than 1 year after  
15 the date of enactment of this Act, the Board shall  
16 publish model forms and clauses that a depository  
17 institution may use to describe each of the elements  
18 required by subsection (a).

19 (2) SAFE HARBOR.—A bank shall be treated as  
20 being in compliance with the requirements of sub-  
21 section (a) if the bank's substitute check notice uses  
22 a model form or clause published by the Board and  
23 such model form or clause accurately describes the  
24 bank's policies and practices. A bank may delete any





1 information in the model form or clause that is not  
2 required by this Act or rearrange the format.

3 (3) USE OF MODEL LANGUAGE NOT RE-  
4 QUIRED.—This section shall not be construed as re-  
5 quiring any bank to use a model form or clause that  
6 the Board prepares under this subsection.

7 **SEC. 12. EFFECT ON OTHER LAW.**

8 This Act shall supersede any provision of Federal or  
9 State law, including the Uniform Commercial Code, that  
10 is inconsistent with this Act, but only to the extent of the  
11 inconsistency.

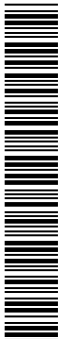
12 **SEC. 13. VARIATION BY AGREEMENT.**

13 (a) SECTION 7.—Any provision of section 7 may be  
14 varied by agreement of the banks involved.

15 (b) NO OTHER PROVISIONS MAY BE VARIED.—Ex-  
16 cept as provided in subsection (a), no provision of this Act  
17 may be varied by agreement of any person or persons.

18 **SEC. 14. REGULATIONS.**

19 (a) IN GENERAL.—The Board may, by regulation,  
20 clarify or otherwise implement the provisions of this Act  
21 or may modify the requirements imposed by this Act with  
22 respect to substitute checks to further the purposes of this  
23 Act, including reducing risk, accommodating technological  
24 or other developments, and alleviating undue compliance  
25 burdens.



1 (b) BOARD MONITORING OF CHECK COLLECTION  
2 AND RETURN PROCESS; ADJUSTMENT OF TIME PERI-  
3 ODS.—

4 (1) MONITORING OF CHECK COLLECTION AND  
5 RETURN PROCESS.—The Board shall monitor the ex-  
6 tent to which—

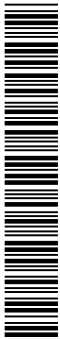
7 (A) original checks are converted to sub-  
8 stitute checks in the check collection and return  
9 process, and

10 (B) checks are collected and returned elec-  
11 tronically rather than in paper form.

12 (2) ADJUSTMENT OF TIME PERIODS.—The  
13 Board shall exercise the Board's authority under  
14 section 603(d)(1) of the Expedited Funds Avail-  
15 ability Act to reduce the time periods applicable  
16 under subsections (b) and (e) of section 603 of such  
17 Act for making funds available for withdrawal, when  
18 warranted.

19 (c) PUBLICATION OF SCHEDULE BY BOARD FOR  
20 CHECK TRANSPORTATION SERVICES.—Section 11A(b) of  
21 the Federal Reserve Act (12 U.S.C. 248a(b)) is  
22 amended—

23 (1) by striking “and” at the end of paragraph  
24 (7);



1           (2) by redesignating paragraph (8) as para-  
2       graph (9); and

3           (3) by inserting after paragraph (7) the fol-  
4       lowing new paragraph:

5           “(8) check transportation services; and”.

6   **SEC. 15. EFFECTIVE DATE.**

7       This Act shall take effect at the end of the 18-month  
8       period beginning on the date of the enactment of this Act,  
9       except as otherwise specifically provided in this Act.

